ORIGINAL

Supreme Court, U.S.
FILED
JUN 10 2005
OFFICE OF THE CLERK

No. 04-1153

IN THE
SUPREME COURT OF THE UNITED STATES

THE STATE OF INDIANA,
Petitioner,

v.

ROY LEE WARD,
Respondent.

On Petition for a Writ of Certiorari to the
Indiana Supreme Court

MOTION TO PROCEED *IN FORMA PAUPERIS*

The Respondent, ROY LEE WARD, by counsel, respectfully moves this Court for leave to proceed *In Forma Pauperis* pursuant to Rule 39. In support of this motion, counsel state that they were appointed to represent Mr. Ward in his direct appeal to the Supreme Court of Indiana by the trial court, Spencer Circuit Court, because he was indigent and without sufficient funds to retain an attorney and pay fees for said action. Mr. Ward has been incarcerated since his arrest in this case and

RECEIVED
JUN 14 2005

has not been gainfully employed. He remains indigent as demonstrated in the Affidavit attached hereto.

Respectfully submitted,

Lorinda Meier Youngcourt
Counsel of Record
P.O. Box 206
Huron, IN 47437-0206
(812) 849-9852

REPORT ID: TFDRHRPT-30 INDIANA DEPARTMENT OF CORRECTION DATE 06/06/2005
LOC: ISP ALL TRANSACTION HISTORY REPORT TIME 09:02:16
AS OF 12/06/2004 THRU 06/06/2005 PAGE 1

OFFENDER NO: 914976 NAME: WARD, ROY L

DATE POSTED	ID	DOCUMENT NUMBER	TRAN DT	TYP	CODE	AMOUNT	ADDITIONAL DESCRIPTION
06/03/2005	002	ISP 06/03	06/03/2005	D	COMM	$49.07	ISP-060305-01421 /
06/03/2005	002	ISP 06/03	06/03/2005	D	COMM	$7.61	ISP-060305-01402 /
06/03/2005	002	ISP 06/03	06/03/2005	D	COMM	$23.67	ISP-060305-00640 /
06/03/2005	002	ISP 06/03	06/03/2005	D	COMM	$5.35	ISP-060305-00628 /
06/01/2005	007	SHOP 54	06/01/2005	C	SP04	$15.20	
05/26/2005	004	ISP 05/26	05/26/2005	D	COMM	$53.61	ISP-052605-00306 /
05/26/2005	004	ISP 05/26	05/26/2005	D	COMM	$9.13	ISP-052605-00285 /
05/13/2005	003	ISP 05/13	05/13/2005	D	COMM	$96.50	ISP-051305-00421 /
05/13/2005	003	ISP 05/13	05/13/2005	D	COMM	$6.88	ISP-051305-00397 /
05/11/2005	013	R 90772	05/11/2005	C	POMO	$120.00	VIRGINIA WARD
05/06/2005	008	R 90510	05/06/2005	C	POMO	$15.20	MCC
05/06/2005	003	ISP 05/06	05/06/2005	D	COMM	$49.28	ISP-050605-01063 /
05/06/2005	003	ISP 05/06	05/06/2005	D	COMM	$18.88	ISP-050605-01046 /
05/06/2005	003	ISP 05/06	05/06/2005	D	COMM	$20.70	ISP-050605-00699 /
05/06/2005	003	ISP 05/06	05/06/2005	D	COMM	$42.09	ISP-050605-00693 /
05/06/2005	003	ISP 05/06	05/06/2005	D	COMM	$3.21	ISP-050605-00683 /
05/05/2005	024	POSTAGE	05/05/2005	D	ISRV	$1.52	
04/29/2005	002	ISP 04/29	04/29/2005	D	COMM	$25.65	ISP-042905-00443 /
04/29/2005	002	ISP 04/29	04/29/2005	D	COMM	$19.46	ISP-042905-00423 /
04/28/2005	004	POSTAGE	04/28/2005	D	ISRV	$6.05	
04/27/2005	011	R 89881	04/27/2005	C	POMO	$275.00	KIMBERLY WARD
04/27/2005	001	COMM CR	04/26/2005	C	ADJC	$0.57	ISP-042205-00041/REFU
04/25/2005	006	POSTAGE	04/25/2005	D	ISRV	$0.43	
04/22/2005	003	ISP 04/22	04/22/2005	D	COMM	$37.80	ISP-042205-00041 /
04/22/2005	003	ISP 04/22	04/22/2005	D	COMM	$17.78	ISP-042205-00015 /
04/15/2005	007	R 86530	04/15/2005	C	POMO	$651.56	MCC

NO PENDING DISBURSEMENT FOUND.

***	AVAILABLE BALANCE.....	$582.86
***	AMOUNT ON HOLD.....	$0.00
***	CURRENT BALANCE.....	$582.86
***	PENDING BALANCE.....	$0.00

END OF REPORT TFDRHRPT-30

I certify that the above printout is true and correct.

Carol Fisch
Offender Acctg

No. 04-1153

IN THE
SUPREME COURT OF THE UNITED STATES

THE STATE OF INDIANA,
Petitioner,

v.

ROY LEE WARD,
Respondent.

On Petition for a Writ of Certiorari to the
Indiana Supreme Court

AFFIDAVIT IN SUPPORT OF MOTION TO PROCEED *IN FORMA PAUPERIS*

I swear or affirm under penalty of perjury that, because of my poverty, I cannot prepay the docket fees or pay the publishing expenses to oppose the State of Indiana's Petition for Writ of Certiorari to the Indiana Supreme Court. I believe that I am entitled to have this Court deny Indiana's Petition. I swear or affirm under penalty of perjury under United States laws that my answers on this form are true and correct. (28 U.S.C. § 1746; 18 U.S.C. § 1621.)

6-8-05
Dated

Roy Lee Ward
Roy Lee Ward

1. *For both you and your spouse estimate the average amount of money received from each of the following sources during the past 12 months. Adjust any amount that was received weekly, biweekly, quarterly, semiannually, or annually to show the monthly rate. Use gross amounts, that is amounts before any deductions for taxes or otherwise.*

I have no regular source of income. My mother occasionally sends me small sums of money which I use for commissary items such as snacks, and medical and dental expenses.

2. *List your employment history for the past two (2) years, most recent employer first. (Gross monthly pay is before taxes or other deductions.)*

I have been incarcerated on death row of the Indiana Department of Corrections for the last two (2) years.

3. *List your spouse's employment history for the past two years, most recent employer first. (Gross monthly pay is before taxes or other deductions.)*

I am unmarried.

4. *How much cash do you and your spouse have?* $ 582.86 . *Below, state any money you or your spouse have in bank accounts or in any other financial institution.*

Financial Institution	Type of Account	Amount you have	Amount your spouse has
		$	
		$	

If you are a prisoner seeking to appeal a judgment in a civil action or proceeding, you must attach a statement certified by the appropriate officer showing all receipts, expenditures, and balances during the last six months in your institutional accounts. If you have multiple accounts, perhaps because you have been in multiple institutions, attach one certified statement of each account.

5. *List the assets, and their values, which you own or your spouse owns. Do not list clothing and ordinary household furnishings.*

I own no property except my personal clothing and the few items of personal property allowed by the Indiana Department of Corrections.

6. *State every person, business, or organization owing you or your spouse money, and the amount owed.*

I am owned no money by any person, business or organization.

7. *State the persons who rely on you or your spouse for support.*

No one relies upon me for support.

8. *Estimate the average monthly expenses of you and your family. Show separately the amounts paid by your spouse. Adjust any payments that are made weekly, biweekly, semiannually, or annually to show the monthly rate.*

I have no monthly expenses. I occasionally receive small sums of money from my mother which I spend on food in commissary, medical and dental treatment.

9. *Do you expect any major changes to your monthly income or assets or liabilities during the next 12 months?* ☐Yes ✓No

10. *Have you paid – or will you be paying – an attorney any money for services in connection with this case including the completion of this form.* ☐Yes ✓No

11. *Have you paid – or will you be paying – anyone other than an attorney (such as paralegal or typist) any money for services in connection with this case, including the completion of this form?* ☐Yes ✓No

12. *Provide any other information that will help explain why you cannot pay the docket fees for your appeal.*

None

13. *State the address of your legal residence.*

Roy Lee Ward #914976
Indiana State Prison
P.O. Box 41
Michigan City, IN 46361

Your age: 32

Your years of schooling: G.E.D.

Your social security number: 312-02-8326

No. 04-1153

IN THE
SUPREME COURT OF THE UNITED STATES

THE STATE OF INDIANA,
Petitioner,

v.

ROY LEE WARD,
Respondent.

On Petition for a Writ of Certiorari to the
Indiana Supreme Court

RESPONDENT'S BRIEF IN OPPOSITION

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Counsel for Respondent

STATEMENT

I. The underlying facts

Ward moved for a Change of Venue from Spencer County, or to Draw Residents from Another County [App.[1] vol 8, p. 1835; vol. 9, p. 2029]. The motion was heard pre-trial [Tr.[2] 5/30/02, pp. 6-46]. Prior to jury selection, Ward renewed the motion and it was denied [Tr. 10/7/02, p. 4]. Ward exhausted all of his peremptory challenges [Tr. vol. VI, pp. 950-51; vol. VII, p. 1038]. He renewed the venue motion at the conclusion of jury selection, which was again denied [Tr. vol. VIII, pp. 1058, 1060].

Ward disagrees with the State of Indiana's recitation of underlying facts on page four of the Petition for Writ of Certiorari. The evidence presented at trial was that all the vaginal and oral swabs taken from Payne were negative for sperm and seminal fluids [Tr. vol. XII, pp. 1774-75]. Ward's DNA was not found on any "rape kit" samples taken from Payne's body [Tr. vol. XII, pp. 1779-83].

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[1] The abbreviation "App." refers to the Appendix to the Brief of Appellant filed with the Indiana Supreme Court and is part of the record herein.

[2]The abbreviation "Tr." refers to the Transcript (by date or volume number) that was filed by the Spencer Circuit Court Reporter with the Indiana Supreme Court and is part of the record herein.

REASONS TO DENY THE PETITION

I

The Indiana Supreme Court correctly found that Ward had not received a fair trial and that the trial court erred in not granting a change of venue.

A. Ward objected at every opportunity to the bias and prejudice of the Spencer County venue and jury.

The State of Indiana asserts that "Ward was first heard to object to the impartiality of his jury on appeal following his conviction and sentence." [Petition for Writ of Certiorari, p. 5]. According to Indiana, because there was no objection, *Beck v. Washington*, 369 U.S. 541, 557-58 (1962) bars Ward relief.

Indiana's assertion that Ward failed to object is flatly untrue. The Indiana Supreme Court would have refused to hear the issue had it been waived in the trial court. *Brown v. Indiana*, 783 N.E.2d 1121, 1126 (Ind. 2003). On five occasions and at all stages of his trial Ward objected to being tried in Spencer County, Indiana and questioned the venue's impartiality. Months prior to trial Ward filed a Verified Motion for Change of Venue from the County or, in the Alternative, to Draw the Jury from Residents of Another County [App. v.8, p.1835]. The motion was based on the "vicious and lurid nature" of the crime, expressed public outrage, news coverage and public knowledge, or speculation, of Ward's background. These conditions, Ward asserted, were "continuing and pervasive" in Spencer county and its adjoining counties [App. v.8, pp. 1836]. After the trial court denied Ward further discovery for the venue hearing Ward withdrew the motion.

Ward re-filed an identical Motion for Change of Venue a few weeks later, but still months before trial [App. v. 8, p. 2029]. Ward orally renewed the motion the first day of trial [Tr. vol. I, pp. 3-4]. During jury selection, after exhausting all of his peremptory challenges, Ward's request for additional challenges was denied [Tr. vol. VI, pp. 950-51; vol. VII, pp. 1038-40]. Prior to evidence being presented, Ward orally renewed his request for a change of venue [Tr. vol. VIII, pp. 1058-60] and he renewed the motion at the conclusion of all the evidence in the Guilt Phase. [Tr. vol. XIII, pp. 1983-85].

B. *Beck v. Washington* Does Not Make *Irvin v. Dowd* Inapplicable to Ward's Case

Indiana argues that the Indiana Supreme Court read *Irvin v. Dowd* "in isolation" without also looking to *Beck v. Washington* which "clarified" *Irvin* [Petition for Writ of Certiorari, p. 7]. Irrespective of its various divisions and subdivisions, Indiana's argument is that Ward must prove, but cannot, that the jurors seated at his trial were biased, prejudiced and incapable of returning an impartial verdict. According to Indiana, the overall community sentiment from which the seated jurors were drawn is of no import. Indiana cites to *Beck v. Washington* as authority. This argument is without merit.

In *Beck v. Washington*, this Court compared Beck's claim to that in *Irvin v. Dowd*, finding that in Irvin's case,

> [S]ensational publicity adverse to the accused permeated the small town in which he was tried, the voir dire examination indicated that 90% of 370 prospective jurors and two-thirds of those seated on the jury had an opinion as to guilt, and the accused unsuccessfully challenged for cause several persons accepted on the jury. The fact that [Beck] did not challenge for cause any of the jurors so selected is strong evidence that he was convinced the jurors were not biased and had not formed any opinions as to his guilt.

II

The Indiana Supreme Court correctly followed the precedent of *Irvin v. Dowd* in finding Ward did not receive a fair trial.

Indiana next argues that the Indiana Supreme Court significantly departed from this Court's precedent when it found Ward had not been afforded an impartial jury. This argument is also without merit. The Indiana Supreme Court wrote a well researched and reasoned opinion which cited to numerous juror quotes found in the trial record.

The Indiana Supreme Court unanimously reversed Ward's conviction based upon "a showing of a general atmosphere of prejudice throughout the community" [Petition for Writ of Certiorari, App. p. 12a]. The supreme court found there was overwhelming evidence of community bias and that the passions stirred by the young girl's brutal murder had not calmed nor cooled. Based on these findings, the supreme court found that Ward had been denied a fair and impartial trial.

The supreme court analyzed in detail the extensive evidence relevant to the jury pool's knowledge, opinions and attitudes [Petition for Writ of Certiorari, App. pp. 4a-9a]. The supreme court found that juror "questionnaires revealed the pervasive nature of the pretrial publicity, the extent of the community's knowledge about this case, and its understandable outrage." [Petition for Writ of Certiorari, App. p. 5a]. As stated by a venire member, "unless you live under a rock you have heard a lot about this case . . . everyone was talking about it - you couldn't go anywhere!" [Petition for Writ of Certiorari, App. p. 5a].

As in *Irvin*, the Indiana Supreme Court did not find that individual jurors were necessarily biased, nor media coverage decisive, but that "the critical inquiry is whether overall community

bias and prejudice exist such that Ward was denied a fair trial." [Petition for Writ of Certiorari, App. p. 11a]. Throughout the proceedings, Ward consistently referred not only to media coverage, but conversation and dissemination of information within the small community and county.

Relying upon state court precedent, the supreme court noted a "presumption that juror's voir dire is truthful." *Brown v. State*, 563 N.E.2d 103, 105 (Ind. 1990). However, relying upon *Murphy v. Florida*, 421 U.S. 794 (1975), found that the presumption could be overcome.

Indiana mentions *Murphy v. Florida*, 421 U.S. 794 (1975), a case which post dates both *Irvin* and *Beck* only in passing. In *Murphy*, this Court stated,

> In a community where most veniremen will admit to a disqualifying prejudice, the reliability of the others' protestations may be drawn into question; for it is then more probable that they are part of a community deeply hostile to the accused, and more likely that they may unwittingly have been influenced by it.

Id. at 803.

Irvin v. Dowd, 366 U.S. 717 (1961) and the instant case are factually strikingly similar. Most jury pool members said they could set aside any preconceived opinion of guilt. Yet, the prevailing community sentiment indicated a build-up of prejudice. The trial was a *cause celebre* in the "small community-so much so that curbstone opinions, not only as to . . . guilt but even as to what punishment he should receive, were solicited and recorded on the public streets...." News accounts contained details of the crime and of Ward's criminal history. In short, the prospective juror's were from a small community, asked to decide a high profile murder cases, while passions were still running high over the crimes. *Id.* at 724-28.

Ward's case, as in *Irvin,* involved a murder conviction and a death sentence. *Id.* at 718. Even though the *Irvin* trial court may have denied the defendant's three motions for change of venue and eight motions to continue the trial, based upon an interpretation of the controlling Indiana statute at the time, *Id.* at 720, the *Irvin* Court considered the case upon prevailing Indiana precedent. In the face of the statute, "the Indiana Supreme Court held that if it was 'made to appear after attempt has actually been made to secure an impartial jury that such jury could not be obtained in the county of present venue...it becomes the duty of the judiciary to provide to every accused a public trial by an impartial jury, even though to do so the court must grant a second change of venue and thus contravene [the statute] . . .'" *Id.* at 721, quoting *State ex rel. Gannon vs. Porter Circuit Court*, 239 Ind. 637, 642, 159 N.E.2d 713, 715 (1959). *Irvin* was decided simply upon the merits of the defendant's ability to obtain a fair trial in the county to which the case was venued. The fact that the trial court may have felt prohibited from granting the second change does not appear to effect the court's analysis in such a way that it makes the case inapplicable to Ward's. This Court judged the veracity of juror's responses against the template of the circumstances surrounding the trial. *Irvin*, 366 U.S.at 727-28.

In Ward's case, a hostile community environment existed and was evidenced outside the courtroom. On August 30, 2002, a little more than a month before the trial was scheduled to begin, te judge forcefully and sternly admonished those in the courtroom over an incident that occurred earlier in the day. As Ward was being escorted into the courthouse there were shouts and the judge thought some people had to be restrained [Tr.8/30/02, p. 38]. Only 38 days later the parties would try to pick a fair and unbiased jury to decide Ward's fate: whether he lived or died.

The Indiana Supreme Court correctly held that, "With his life at stake, . . . the Constitution requires that the defendant 'be tried in an atmosphere undisturbed by so huge a wave of public passion and by a jury other than one in which [one half] of the members admit, before hearing any testimony, to possessing a belief in his guilt.'" [Petition for Writ of Certiorari, p. 12a].

CONCLUSION

The petition for writ of certiorari should be denied.

Respectfully submitted,

Lorinda Meier Youngcourt
Counsel of Record

Steven E. Ripstra

June 10, 2005

Lorinda Meier Youngcourt, Attorney at Law

Post Office Box 206 ❖ Huron, Indiana 47437-0206
Phone 812-849-9852 ❖ Fax 812-849-1294

Sent by Federal Express

June 10, 2005

William K. Suter, Clerk
Supreme Court of United States
One 1st St NE
Washington, D.C. 20543

Re: State of Indiana v. Roy Lee Ward; 04-1153

Dear Mr. Suter:

Enclosed you will find an original and eleven (11) copies of Roy Lee Ward's Motion to Proceed *In Forma Pauperis*, Brief in Opposition to the State of Indiana's Petition for Writ of Certiorari to the Indiana Supreme Court, and Proof of Service for filing in the above referenced cause.

You will also find enclosed a self-addressed stamped for your ease in returning a file stamped copy of the motion to me for my file. Thank you for your time and cooperation in this matter.

Sincerely,

Lorinda Meier Youngcourt
Attorney at Law

e-mail lmyoungcourt@earthlink.net

No. 04-1153

IN THE
SUPREME COURT OF THE UNITED STATES

THE STATE OF INDIANA,
Petitioner,

v.

ROY LEE WARD,
Respondent.

On Petition for a Writ of Certiorari to the
Indiana Supreme Court

PROOF OF SERVICE

I, Lorinda Meier Youngcourt, do swear or declare that on this date, June 10, 2005, as required by Supreme Court Rule 29, I have served the enclosed MOTION FOR LEAVE TO PROCEED *IN FORMA PAUPERIS* and RESPONDENT'S BRIEF IN OPPOSITION on each party to the above proceeding or that party's counsel, and on every other person required to be served, by depositing an envelope containing the above documents in the United States mail properly addressed to each of them and with first-class postage prepaid, or by delivery to a third-party commercial carrier for delivery within 3 calendar days.

The names and addresses of those served are as follows:

Steve Carter, Stephen R. Creason, and James B. Martin, Office of the Attorney General, Indiana Government Center South, Fifth Floor, 302 W Washington Street, Indianapolis, IN 46204.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on June 10, 2005.

Lorinda Meier Youngcourt

BR

ORIGINAL

Supreme Court, U.S.
FILED
SEP - 7 2005
OFFICE OF THE CLERK

No. 05-25

IN THE

SUPREME COURT OF THE UNITED STATES

DAVID DiGUGLIELMO, Superintendent SCI Graterford — PETITIONER

(~~Your Name~~)

VS.

CURTIS BRINSON — RESPONDENT(~~S~~)

MOTION FOR LEAVE TO PROCEED *IN FORMA PAUPERIS*

The petitioner asks leave to file the attached ~~petition for~~ RESPONSE TO a writ of certiorari without prepayment of costs and to proceed *in forma pauperis*.

[ ] Petitioner has previously been granted leave to proceed *in forma pauperis* in the following court(s):

[✓] Petitioner has **not** previously been granted leave to proceed *in forma pauperis* in any other court.

Petitioner's affidavit or declaration in support of this motion is attached hereto.

X Curtis Brinson

(Signature)

AFFIDAVIT OR DECLARATION
IN SUPPORT OF MOTION FOR LEAVE TO PROCEED *IN FORMA PAUPERIS*

I, CURTIS BRINSON, am the ~~petitioner~~ Respondent in the above-entitled case. In support of my motion to proceed *in forma pauperis*, I state that because of my poverty I am unable to pay the costs of this case or to give security therefor; and I believe I am entitled to redress.

1. For both you and your spouse estimate the average amount of money received from each of the following sources during the past 12 months. Adjust any amount that was received weekly, biweekly, quarterly, semiannually, or annually to show the monthly rate. Use gross amounts, that is, amounts before any deductions for taxes or otherwise.

Income source	Average monthly amount during the past 12 months		Amount expected next month	
	You	Spouse	You	Spouse
Employment	$ NONE	$ NONE	$ NONE	$ NONE
Self-employment	$ 0 | 00	$ 0 | 00	$ 0 | 00	$ 0 | 00
Income from real property (such as rental income)	$ 0 | 00	$ 0 | 00	$ 0 | 00	$ 0 | 00
Interest and dividends	$ 0 | 00	$ 0 | 00	$ 0 | 00	$ 0 | 00
Gifts	$ 0 | 00	$ 0 | 00	$ 0 | 00	$ 0 | 00
Alimony	$ 0 | 00	$ 0 | 00	$ 0 | 00	$ 0 | 00
Child Support	$ 0 | 00	$ 0 | 00	$ 0 | 00	$ 0 | 00
Retirement (such as social security, pensions, annuities, insurance)	$ 0 | 00	$ 0 | 00	$ 0 | 00	$ 0 | 00
Disability (such as social security, insurance payments)	$ 0 | 00	$ 0 | 00	$ 0 | 00	$ 0 | 00
Unemployment payments	$ 0 | 00	$ 0 | 00	$ 0 | 00	$ 0 | 00
Public-assistance (such as welfare)	$ 0 | 00	$ 0 | 00	$ 0 | 00	$ 0 | 00
Other (specify): NONE	$ 0 | 00	$ 0 | 00	$ 0 | 00	$ 0 | 00
Total monthly income:	$ 0 | 00	$ 0 | 00	$ 0 | 00	$ 0 | 00

2. List your employment history for the past two years, most recent first. (Gross monthly pay is before taxes or other deductions.)

Employer	Address	Dates of Employment	Gross monthly pay
NONE	NONE	NONE	$ NONE
			$
			$

3. List your spouse's employment history for the past two years, most recent employer first. (Gross monthly pay is before taxes or other deductions.)

Employer	Address	Dates of Employment	Gross monthly pay
NONE	NONE	NONE	$ NONE
			$
			$

4. How much cash do you and your spouse have? $ NONE
Below, state any money you or your spouse have in bank accounts or in any other financial institution.

Financial institution	Type of account	Amount you have	Amount your spouse has
NONE	NONE	$ NONE	$ NONE
		$	$
		$	$

5. List the assets, and their values, which you own or your spouse owns. Do not list clothing and ordinary household furnishings.

☐ Home
Value NONE

☐ Other real estate
Value NONE

☐ Motor Vehicle #1
Year, make & model NONE
Value NONE

☐ Motor Vehicle #2
Year, make & model NONE
Value NONE

☐ Other assets
Description NONE
Value NONE

6. State every person, business, or organization owing you or your spouse money, and the amount owed.

Person owing you or your spouse money	Amount owed to you	Amount owed to your spouse
NONE	$ NONE	$ NONE
" "	$ " "	$ " "
" "	$ " "	$ " "

7. State the persons who rely on you or your spouse for support.

Name	Relationship	Age
NONE	NONE	NONE
" "	" "	" "
" "	" "	" "

8. Estimate the average monthly expenses of you and your family. Show separately the amounts paid by your spouse. Adjust any payments that are made weekly, biweekly, quarterly, or annually to show the monthly rate.

	You	Your spouse
Rent or home-mortgage payment (include lot rented for mobile home) Are real estate taxes included? ☐ Yes ☑ No Is property insurance included? ☐ Yes ☑ No	$ NONE	$ NONE
Utilities (electricity, heating fuel, water, sewer, and telephone)	$ NONE	$ NONE
Home maintenance (repairs and upkeep)	$ NONE	$ NONE
Food	$ NONE	$ NONE
Clothing	$ NONE	$ NONE
Laundry and dry-cleaning	$ NONE	$ NONE
Medical and dental expenses	$ NONE	$ NONE

	You	Your spouse
Transportation (not including motor vehicle payments)	$ NONE	$ NONE
Recreation, entertainment, newspapers, magazines, etc.	$ NONE	$ NONE
Insurance (not deducted from wages or included in mortgage payments)		
Homeowner's or renter's	$ NONE	$ NONE
Life	$ NONE	$ NONE
Health	$ NONE	$ NONE
Motor Vehicle	$ NONE	$ NONE
Other: NONE	$ NONE	$ NONE
Taxes (not deducted from wages or included in mortgage payments)		
(specify): NONE	$ NONE	$ NONE
Installment payments		
Motor Vehicle	$ NONE	$ NONE
Credit card(s)	$ NONE	$ NONE
Department store(s)	$ NONE	$ NONE
Other: NONE	$ NONE	$ NONE
Alimony, maintenance, and support paid to others	$ NONE	$ NONE
Regular expenses for operation of business, profession, or farm (attach detailed statement)	$ NONE	$ NONE
Other (specify): NONE	$ NONE	$ NONE
Total monthly expenses:	$ NONE	$ NONE

9. Do you expect any major changes to your monthly income or expenses or in your assets or liabilities during the next 12 months?

☐ Yes ☑ No If yes, describe on an attached sheet.

10. Have you paid – or will you be paying – an attorney any money for services in connection with this case, including the completion of this form? ☐ Yes ☑ No

If yes, how much? _____

If yes, state the attorney's name, address, and telephone number:

11. Have you paid—or will you be paying—anyone other than an attorney (such as a paralegal or a typist) any money for services in connection with this case, including the completion of this form?

☐ Yes ☑ No

If yes, how much? _____

If yes, state the person's name, address, and telephone number:

12. Provide any other information that will help explain why you cannot pay the costs of this case.

I have been incarcerated for the past twenty-years. I have no income nor any means of attaining funds.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on: 8/15/, 20 05

X Carlos Briscoe

(Signature)

NO. 05-25

IN THE SUPREME COURT OF THE UNITED STATES

DAVID DiGUGLIELMO; THE DISTRICT ATTORNEY OF THE COUNTY OF PHILADELPHIA; THE ATTORNEY GENERAL OF THE COMMONWEALTH OF PENNSYLVANIA,

Petitioners,

v.

CURTIS BRINSON,

Respondent.

On Petition for Writ of Certiorari to the
United States Court of Appeals for the Third Circuit

**BRIEF IN OPPOSITION TO
PETITION FOR WRIT OF CERTIORARI**

NORRIS E. GELMAN, ESQUIRE
ATTORNEY FOR RESPONDENT BRINSON
THE PUBLIC LEDGER BUILDING
620 CHESTNUT STREET
SUITE 940
PHILADELPHIA, PA. 19106
215 - 574 - 0513
ATTORNEY ID # 14223

ORIGINAL

Supreme Court, U.S.
FILED
SEP - 7 2005
OFFICE OF THE CLERK

No. 05-25

IN THE

SUPREME COURT OF THE UNITED STATES

David DiGuglielmo, Superintendent SCI Graterford — PETITIONER
(~~Your Name~~)

VS.

Curtis Brinson — RESPONDENT(~~S~~)

MOTION FOR LEAVE TO PROCEED *IN FORMA PAUPERIS*

The petitioner asks leave to file the attached ~~petition for~~ Response to a writ of certiorari without prepayment of costs and to proceed *in forma pauperis*.

[ ] Petitioner has previously been granted leave to proceed *in forma pauperis* in the following court(s):

[✓] Petitioner has **not** previously been granted leave to proceed *in forma pauperis* in any other court.

Petitioner's affidavit or declaration in support of this motion is attached hereto.

X Curtis Brinson
(Signature)

AFFIDAVIT OR DECLARATION
IN SUPPORT OF MOTION FOR LEAVE TO PROCEED *IN FORMA PAUPERIS*

I, CURTIS BRINSON, am the ~~petitioner~~ Respondent in the above-entitled case. In support of my motion to proceed *in forma pauperis*, I state that because of my poverty I am unable to pay the costs of this case or to give security therefor; and I believe I am entitled to redress.

1. For both you and your spouse estimate the average amount of money received from each of the following sources during the past 12 months. Adjust any amount that was received weekly, biweekly, quarterly, semiannually, or annually to show the monthly rate. Use gross amounts, that is, amounts before any deductions for taxes or otherwise.

Income source	Average monthly amount during the past 12 months		Amount expected next month	
	You	Spouse	You	Spouse
Employment	$ NONE	$ NONE	$ NONE	$ NONE
Self-employment	$ 0.00	$ 0.00	$ 0.00	$ 0.00
Income from real property (such as rental income)	$ 0.00	$ 0.00	$ 0.00	$ 0.00
Interest and dividends	$ 0.00	$ 0.00	$ 0.00	$ 0.00
Gifts	$ 0.00	$ 0.00	$ 0.00	$ 0.00
Alimony	$ 0.00	$ 0.00	$ 0.00	$ 0.00
Child Support	$ 0.00	$ 0.00	$ 0.00	$ 0.00
Retirement (such as social security, pensions, annuities, insurance)	$ 0.00	$ 0.00	$ 0.00	$ 0.00
Disability (such as social security, insurance payments)	$ 0.00	$ 0.00	$ 0.00	$ 0.00
Unemployment payments	$ 0.00	$ 0.00	$ 0.00	$ 0.00
Public-assistance (such as welfare)	$ 0.00	$ 0.00	$ 0.00	$ 0.00
Other (specify): NONE	$ 0.00	$ 0.00	$ 0.00	$ 0.00
Total monthly income:	$ 0.00	$ 0.00	$ 0.00	$ 0.00

2. List your employment history for the past two years, most recent first. (Gross monthly pay is before taxes or other deductions.)

Employer	Address	Dates of Employment	Gross monthly pay
NONE	NONE	NONE	$ NONE
			$
			$

3. List your spouse's employment history for the past two years, most recent employer first. (Gross monthly pay is before taxes or other deductions.)

Employer	Address	Dates of Employment	Gross monthly pay
NONE	NONE	NONE	$ NONE
			$
			$

4. How much cash do you and your spouse have? $ NONE
Below, state any money you or your spouse have in bank accounts or in any other financial institution.

Financial institution	Type of account	Amount you have	Amount your spouse has
NONE	NONE	$ NONE	$ NONE
		$	$
		$	$

5. List the assets, and their values, which you own or your spouse owns. Do not list clothing and ordinary household furnishings.

☐ Home
Value NONE

☐ Other real estate
Value NONE

☐ Motor Vehicle #1
Year, make & model NONE
Value NONE

☐ Motor Vehicle #2
Year, make & model NONE
Value NONE

☐ Other assets
Description NONE
Value NONE

6. State every person, business, or organization owing you or your spouse money, and the amount owed.

Person owing you or your spouse money	Amount owed to you	Amount owed to your spouse
NONE	$ NONE	$ NONE
" "	$ " "	$ " "
" "	$ " "	$ " "

7. State the persons who rely on you or your spouse for support.

Name	Relationship	Age
NONE	NONE	NONE
" "	" "	" "
" "	" "	" "

8. Estimate the average monthly expenses of you and your family. Show separately the amounts paid by your spouse. Adjust any payments that are made weekly, biweekly, quarterly, or annually to show the monthly rate.

	You	Your spouse
Rent or home-mortgage payment (include lot rented for mobile home) Are real estate taxes included? ☐ Yes ☑ No Is property insurance included? ☐ Yes ☑ No	$ NONE	$ NONE
Utilities (electricity, heating fuel, water, sewer, and telephone)	$ NONE	$ NONE
Home maintenance (repairs and upkeep)	$ NONE	$ NONE
Food	$ NONE	$ NONE
Clothing	$ NONE	$ NONE
Laundry and dry-cleaning	$ NONE	$ NONE
Medical and dental expenses	$ NINE	$ NONE

	You	Your spouse
Transportation (not including motor vehicle payments)	$ NONE	$ NONE
Recreation, entertainment, newspapers, magazines, etc.	$ NONE	$ NONE
Insurance (not deducted from wages or included in mor ge payments)		
Homeowner's or renter's	$ NONE	$ NONE
Life	$ NONE	$ NONE
Health	$ NONE	$ NONE
Motor Vehicle	$ NONE	$ NONE
Other: NONE	$ NONE	$ NONE
Taxes (not deducted from wages or included in mortgage payments)		
(specify): NONE	$ NONE	$ NONE
Installment payments		
Motor Vehicle	$ NONE	$ NONE
Credit card(s)	$ NONE	$ NONE
Department store(s)	$ NONE	$ NONE
Other: NONE	$ NONE	$ NONE
Alimony, maintenance, and support paid to others	$ NONE	$ NONE
Regular expenses for operation of business, profession, or farm (attach detailed statement)	$ NONE	$ NONE
Other (specify): NONE	$ NONE	$ NONE
Total monthly expenses:	$ NONE	$ NONE

9. Do you expect any major changes to your monthly income or expenses or in your assets or liabilities during the next 12 months?

☐ Yes ☑ No If yes, describe on an attached sheet.

10. Have you paid – or will you be paying – an attorney any money for services in connection with this case, including the completion of this form? ☐ Yes ☑ No

If yes, how much? _____

If yes, state the attorney's name, address, and telephone number:

11. Have you paid—or will you be paying—anyone other than an attorney (such as a paralegal or a typist) any money for services in connection with this case, including the completion of this form?

☐ Yes ☑ No

If yes, how much? _____

If yes, state the person's name, address, and telephone number:

12. Provide any other information that will help explain why you cannot pay the costs of this case.

I have been incarcerated for the past twenty-years. I have no income nor any means of obtaining funds.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on: 8/15/_____, 20 05

X Carlos Brewer
(Signature)